

Chapter 8.52

GRAFFITI ABATEMENT ACT

(Effective December 1, 2006)

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8.52.010 Title.

This chapter shall be known as the Graffiti Abatement Act. (Ord. 18798 §1; September 11, 2006).

8.52.020 Purpose.

The City Council does hereby declare graffiti to be a public nuisance that constitutes a blight and health, safety and general welfare risk to the residents of Lincoln. Unless it is removed from public and private properties in a timely manner, it tends to remain, and other properties are then the target of graffiti vandalism with the result that entire neighborhoods and the community is depreciated in value and made a less desirable place to live. Therefore, the City Council authorizes the Mayor to administer and enforce this chapter within the city and within three miles of the corporate limits of the city and outside of any other organized city or village. (Ord. 18798 §2; September 11, 2006).

8.52.030 Definitions.

Authorized shall mean with the consent of the owner.

Graffiti shall mean any inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was unauthorized by the owner or occupant of the property.

Graffiti implement shall mean an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or manmade surface.

Mayor shall mean the Mayor or any duly authorized representative or person designated by the Mayor.

Owner shall mean any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

Paint stick or graffiti stick shall mean any device containing a solid form of paint, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-eighth of an inch in width.

Property shall mean any real or personal property and that which is affixed, incidental or appurtenant to real property including but not limited to any structure, fence, wall, sign or any separate part thereof whether permanent or not. (Ord. 18798 §3; September 11, 2006).

8.52.040 Prohibited Acts.

It shall be unlawful for any person to apply graffiti to any natural or man-made surface on any public or private building or structure without authorization of the owner. (Ord. 18798 §4; September 11, 2006).

8.52.050 Graffiti as a Nuisance; Prohibited.

(a) Graffiti prohibited. The existence of graffiti on public or private property which is visible from public property or public right-of-way is in violation of this chapter and is declared to be a public nuisance and is subject to the removal and abatement provisions specified in this chapter.

(b) Notice to remove. It shall be the duty of every owner of property within the city and within three miles of the corporate limits of the city to keep their property free from graffiti that is visible to public property or public right-of-way.

(c) Notice and order to abate. Whenever it shall come to the knowledge of the Mayor that there exists upon property the nuisance of graffiti, the Mayor shall cause a written notice of violation and order to abate and remove said nuisance within fifteen days to be served upon the owner. Said notice shall include:

(1) A description of the property sufficient for identification including a street address or legal description or both;

(2) A statement that the property is a graffiti nuisance property with a concise description of the conditions leading to the finding;

(3) A statement that the graffiti must be removed within fifteen days after receipt of the notice and that if the graffiti is not removed within that time the City will declare the property to be a public nuisance subject to the abatement procedures set forth in this section;

(4) A statement that the owner has a right to appeal;

(5) A statement of the City's right to file a lien to recover the costs of abatement if the owner fails to remove the graffiti.

(d) Method of service. The Mayor may serve the notice and order as follows:

(1) By personal service to the owner, or

(2) By certified mail, postage prepaid, return receipt requested to the owner;

(3) If the notice and order is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the property affected by the notice and said notice shall be considered proper service.

(e) Transfer of ownership. It shall be unlawful for any owner of property who has received a notice of violation and order to sell, transfer, mortgage, lease or otherwise dispose of the property to another until the provisions of the notice of violation and order have been complied with, or until

such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any notice of violation and order issued by the Mayor and shall furnish to the Mayor a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such notice of violation and order and fully accepting the responsibility for removing the graffiti as required by such notice of violation and order.

(f) Extension of time for removal. The Mayor shall have the authority to extend the period for compliance but in no case shall any extension of time for compliance amount to a total time of more than twenty-five days.

(g) Consent of owner for removal. An owner may have the City remove the graffiti at the owner's expense upon the mutual consent of both the City and owner and upon the City's receipt of written consent to enter and remove the graffiti and a waiver of liability from the owner. The Mayor may prepare and distribute forms for this purpose.

(h) Abatement by City. If such owner shall have failed or refused to abate and remove the graffiti at the expiration of the date fixed in the notice and order, the Mayor may cause such graffiti nuisance to be removed from such property and shall prepare a statement to the owner of a statement of the actual costs incurred in the abatement and removal and shall deliver same for payment upon said owner to be paid within thirty days of service. If not paid within thirty days, the costs shall be assessed as a lien as provided in (i) below.

(i) Assessment of Cost. Any and all costs incurred by the City in the abatement of the graffiti shall constitute a lien against the property upon which said graffiti existed. The Mayor shall, not later than the fifteenth day of September of each year, report to the City Council on all real estate cleared of graffiti since September 1 of the previous year under the provisions of this chapter, together with costs thereof. Whereupon, the City Council, after public hearing at a regular City Council meeting, shall by resolution assess the costs against such property; provided that notice of the time of such meeting of the City Council for making such assessment and for the purpose of such meeting shall be published once in a newspaper published and of general circulation in the city at least five days before said meeting of the Council is held, or in lieu thereof, notice may be given to the owners of such property by personal service thereof five days before such hearing. Any such assessment shall be a lien upon such property from the date of assessment and shall be collected in the same manner as general taxes. Such assessment shall be delinquent after December 1 following the date of assessment and shall draw interest as provided in *Neb. Rev. Stat. § 45-104.01* for assessments. Nothing herein shall prevent the City from accepting payment or collecting for the related costs by any other means permitted by law. (Ord. 18798 §5; September 11, 2006).

8.52.060 Means of Appeal.

(a) Application for appeal. Any owner receiving a notice and order to abate graffiti on his or her property shall have the right to appeal to the Graffiti Appeals Board provided that a \$50.00 filing fee and a written application for appeal is filed within ten days after the date the notice and order was served.

(b) Effect of failure to appeal. Failure of any person to file an appeal shall constitute a waiver of the right to an administrative hearing and adjudication of the notice of violation and order or to any portion thereof.

(c) Scope of hearing on appeal. The hearing shall be conducted for purposes of determining whether the conditions constitute graffiti as a public nuisance under this chapter.

(d) Membership of Board. The Graffiti Appeals Board shall consist of a minimum of three members who are not employees of the City of Lincoln. The Board shall annually select one of its

members to serve as chairman. The Mayor shall be an ex-officio member but shall not vote on any matter before the Board. The Board shall be appointed by the Mayor and appointments shall be for three-year terms.

(e) Secretary. The Mayor shall designate a qualified person, who may be an employee of the City of Lincoln, to serve as secretary to the Board. The secretary shall keep a detailed record of all proceedings in the office of the Mayor.

(f) Notice of hearing. The Board shall meet upon notice from the chairman, within ten days of the filing of the appeal. The Mayor shall provide notice of the time and place of the hearing to the appellant at least five days prior to the scheduled hearing date.

(g) Hearing. The owner, the owner's representative, the Mayor and any person whose interests are affected shall be given an opportunity to be heard. All three members of the board must be present for a hearing.

(h) Hearing procedure. The hearing need not be conducted according to the technical rules of evidence and witnesses. The person requesting the hearing, the Mayor and the Board may:

- (1) Call and examine witnesses on any matter relevant to the issues of the hearing;
- (2) Introduce documentary and physical evidence;
- (3) Cross examine opposing witnesses on any matter relevant to the issues of the hearing; and
- (4) Rebut evidence.

(i) Board decision. The Board may uphold, reverse, or modify the notice and order of the Mayor by a concurring vote of a majority of the total number of appointed Board members.

(j) Records and copies. The proceedings of the hearing and the decision of the Board shall be recorded by tape recording or other means of permanent recording determined appropriate by the Board. The proceedings at the hearing shall also be reported by a phonographic reporter if requested by any party thereto. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefor. Such fees may be established by the Board, but shall in no event be greater than the cost involved. Copies of the Board's decision shall be furnished to the owner and to the Mayor.

(k) Appeals. Appeals of the Board's decision shall be filed in accordance with state law.

(l) Stays of enforcement. Appeals of notice and orders shall stay the enforcement of the notice and order until the appeal is heard by the Graffiti Appeals Board. (Ord. 18798 §6; September 11, 2006).

8.52.070 Duties and Powers of the Mayor.

(a) The Mayor shall have the authority to enforce the provisions of this code and shall have the authority necessary to adopt and promulgate rules and procedures to implement provisions of this code not inconsistent with the Charter or with the Lincoln Municipal Code or state statute. Such rules shall not have the effect of waiving abatement requirements.

(b) The Mayor is authorized to enter the property at reasonable times to inspect for graffiti subject to constitutional restrictions on unreasonable searches and seizures. If entry onto property is refused or not obtained, the Mayor is authorized to pursue recourse as provided by law. The Mayor shall carry proper identification when inspecting property or premises in the performance of duties under this code. (Ord. 18798 §7; September 11, 2006).

8.52.080 Violations.

(a) Prosecution of violation and penalties. Any person who violates any provision of Section 8.52.040 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not to exceed \$500.00, or be imprisoned in the county jail for a period not to exceed six months, or both, except that each person so convicted shall be fined in a sum of not less than \$200.00 for the first offense, not less than \$250.00 for the second offense, and not less than \$300.00 for the third offense and each offense thereafter. The penalty provided herein shall be cumulative with and in addition to revocation, cancellation or forfeiture of any license, permit or right elsewhere provided for violation thereof or as provided by law. Each day that a violation of this chapter continues shall constitute a separate and distinct offense and shall be punishable as such.

A court, upon finding a person guilty of any violation of this chapter, may in addition to fines or imprisonment, order such convicted person to make restitution to any persons for damage to such person's property.

(b) Abatement of violation. The imposition of penalties herein prescribed shall not preclude the City from instituting appropriate action to restrain, correct or abate the graffiti. (Ord. 18798 §8; September 11, 2006).

8.52.090 Severability.

Each section and subsection of this chapter is hereby declared to be independent of every other section or subsection of this chapter and invalidity of any section or subsection of this chapter shall not invalidate any other section or subsection thereof. (Ord. 18798 §9; September 11, 2006).